Local 3, International Brotherhood of Electrical Workers, AFL-CIO *and* Northern Telecom, Inc. Case 2-CC-1743

October 26, 1982

DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND MEMBERS FANNING AND HUNTER

On June 21, 1982, Administrative Law Judge Thomas T. Trunkes issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, the General Counsel filed a brief in support of the Administrative Law Judge's Decision, and the Charging Party filed an answering brief in response to Respondent's exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions[2] of the Administrative Law Judge and to adopt his recommended Order, as modified herein.[3]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Local 3, International Brotherhood of Electrical Workers, AFL-CIO, Queens, New York, its officers, agents, and representatives, shall take the action set forth in the said recommended Order, as so modified:

1. Substitute the following for paragraph 1(b):

"(b) In any other manner inducing or encouraging any member employed by a person engaged in commerce or in an industry affecting commerce to engage in action proscribed by Section 8(b)(4)(i) or (ii)(B) of the Act in connection with enforcing a work jurisdictional claim involving telephone interconnect work on projects on which Northern Telecom, Inc., or any other manufacturer, distributor, or installer of telephonic equipment is employed."

2. Substitute the attached notice for that of the Administrative Law Judge.

[1] Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

Although the Administrative Law Judge found that Northern Telecom's branch operations manager, Michael Zafarano, first telephoned Respondent's office on December 15, 1981, with regard to the work stoppage by Kleinknecht's employees, it is not completely clear from the record that Zafarano first called Respondent's office about that matter any time prior to December 23. However, even assuming Zafarano did not make his first call until December 23, such a finding would not affect the results of our decision.

Additionally, we find it unnecessary to rely on the Administrative Law Judge's finding, based on his adverse inference from Respondent's failure to call as a witness Brown, Kleinknecht's electrician foreman and a member of Respondent, that all other members of Respondent were aware of art. XIII, sec. 12, of Respondent's bylaws, which embodies Respondent's "total job" policy.

[2] In adopting the Administrative Law Judge's conclusion that Respondent is responsible for the work stoppage of Kleinknecht's employees, we agree with his findings regarding Respondent's continued maintenance of the above-mentioned bylaw embodying its "total job" policy, Respondent's failure to discipline its members who participated in the work stoppage, and Respondent's responsibility for the statements and actions of foreman-member Brown. Additionally, we rely on the pattern of harassment by Respondent against Northern Telecom, preceding the events in the instant case, which is shown by Zafarano's testimony that on two occasions in 1980, at a different jobsite, Joseph Siedel, a foreman for Pacesetter Communications and a member of Respondent, told Zafarano, *inter alia*, that Respondent was not going to stop pushing Northern Telecom until it had all of Northern Telecom's work. In prior cases involving Respondent, we have held that evidence of a pattern of harassment by a respondent against a primary employer may constitute evidence of the respondent's inducement and encouragement of subsequent unlawful secondary activity directed at that employer. See *Local Union No. 3, International Brotherhood of Electrical Workers, AFL-CIO (Forest Electric Corp.)*, 205 NLRB 1102, fn. 1 (1973), and *Local 3, International Brotherhood of Electrical Workers, AFL-CIO (General Dynamics Communications Company)*, 264 NLRB No. 96 (1982). We also rely on our prior holdings that Respondent's history before this Agency demonstrates its proclivity to engage in unlawful secondary activity in support of its claim to telephone interconnect work being performed by employees represented by the Communications Workers of America. See, e.g., *Local 3, IBEW (General Dynamics Communications Company), supra*, and cases cited therein at fn. 5.

[3] We have modified par. 1(b) of the Administrative Law Judge's recommended Order in order to more appropriately remedy the violation found.

In view of the Administrative Law Judge's provision for a broad order against Respondent, the posting of notices, the publication of the notice in Respondent's newsletter, "Electrical Union World," and the mailing of the newsletter in which the notice is published to all Local 3 members at their home addresses, Member Fanning finds it unwarranted, based upon the circumstances of this case, to also require the publication of the notice in a newspaper of general circulation in the New York metropolitan area, and would delete provision for such publication from the Order.

APPENDIX

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT apply our bylaws in such a manner as to induce or encourage any member employed by George Kleinknecht, Inc., or any other person engaged in commerce or in an industry affecting commerce, to engage in a strike or a refusal in the course of his employment to perform any service, or in such a

manner as to restrain or coerce George Kleinknecht, Inc., or any other person engaged in commerce or in an industry affecting commerce, where, in either case, an object thereof is to force or require George Kleinknecht, Inc., Johnson & Higgins, and any other subcontractors on the jobsite at 95 Wall Street, New York, New York, to cease doing business with Northern Telecom, Inc., or any other employer or person.

WE WILL NOT in any other manner induce or encourage any member employed by a person engaged in commerce or in an industry affecting commerce to engage in action proscribed by Section 8(b)(4)(i) or (ii)(B) of the National Labor Relations Act in connection with enforcing a work jurisdictional claim involving telephone interconnect work on projects on which Northern Telecom, Inc., or any other manufacturer, distributor, or installer of telephonic equipment is employed.

WE HEREBY NOTIFY each of our members that no provision in our bylaws is intended to suggest or require that any member refuse, in the course of his employment, to perform any services because work falling within our claimed jurisdiction is assigned to, or is being performed by, other tradesmen or other persons not in the employ of his own employer or over whom he has no control.

LOCAL 3, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL–CIO

DECISION

STATEMENT OF THE CASE

THOMAS T. TRUNKES, Administrative Law Judge: This case was initiated by a charge filed on December 23, 1981, by Northern Telecom, Inc., herein called Telecom or Charging Party, against Local 3, International Brotherhood of Electrical Workers, AFL–CIO, herein called Local 3 or Respondent. The complaint, issued on January 4, 1982, alleges that Local 3 violated Section 8(b)(4)(i) and (ii)(B) of the Act by inducing and encouraging its members employed by George Kleinknecht, Inc., herein called Kleinknecht, to engage in a strike or refusal in the course of their employment to use, manufacture, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform services, and has threatened, coerced, and restrained Kleinknecht and Johnson & Higgins, herein called J & H, persons engaged in commerce or in industries affecting commerce, to cease using, selling, handling, transporting, or otherwise dealing in the products of, and to cease doing business with, Telecom. Local 3 filed an answer denying the commission of any unfair labor practices.

The hearing on this matter was held before me in New York, New York, on March 29 and 30, 1982. All parties were accorded full opportunity to participate, adduce evidence, examine and cross-examine witnesses, argue orally, and file briefs. The General Counsel, Charging Party, and Respondent all submitted extensive and well prepared oral arguments. Subsequently, all parties filed timely briefs which substantiated their oral arguments in greater detail.

Upon the entire record of the case, including my observation of the demeanor of all witnesses, and after a careful consideration of the briefs and oral arguments, I make the following:

FINDINGS OF FACT

I. JURISDICTION

Telecom, a Delaware corporation, with an office and place of business located at 747 Third Avenue, New York, New York, and with other places of business at various jobsites located in the State of New York, has been engaged in the sale and installation of telephonic equipment. Annually, Telecom, in the course and conduct of its business operations, purchased and received at its various New York State jobsites products, goods, materials, and services valued in excess of $50,000 directly from firms located outside the State of New York. Respondent admits, and I find, that Telecom is engaged in commerce within the meaning of Sections 2(2), (6), and (7) and 8(b)(4) of the Act.[1]

II. THE LABOR ORGANIZATION INVOLVED

Respondent admits, and I find, that it is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background and Work in Dispute*

William W. Standley, manager of office services for J & H, testified as follows:

J & H is a tenant at 95 Wall Street, New York, New York, occupying in excess of 10 floors of the building. On August 17, 1981,[2] J & H entered into a contractual agreement with Telecom for the installation of a telephone system at J & H's Wall Street address. Thereafter, on November 24, J & H engaged Kleinknecht, an electrical contractor in the construction industry, to perform telephone on-site preparation work, which must be performed in order for Telecom to complete its telephone installation. Kleinknecht commenced the access work on November 23, employing from four to eight employees at the jobsite, all of whom were covered by a collective-

[1] For purposes of asserting jurisdiction, the Board has long held that, if the operations of the primary employer alone meet its jurisdictional requirements, it will assert jurisdiction over all secondary employers involved in the case at hand. *Truck Drivers Local Union No. 649, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL (Jamestown Builders Exchange, Inc.)*, 93 NLRB 386, 387 (1951). As Telecom is the primary employer, I find that the Board will assert jurisdiction in this matter. Respondent's brief urging this court to deny jurisdiction is inapposite, and its argument is rejected.

[2] All dates material herein refer to the year 1981.

bargaining agreement with Local 3,[3] including Stuart Brown, herein Brown, who was stipulated by Respondent to be a foreman of Kleinknecht. Robert Ortega, an employee of Telecom working at the Wall Street jobsite since November 9, testified that on November 10 Brown requested that he and other coworkers show him their union cards. They showed him union cards indicating that they were members of Local 1109, Communications Workers of America, herein CWA, a labor organization which represents the employees of Telecom. Brown asked these employees if they would like to "come over" to Local 3. No one accepted the invitation. No further conversations relating to switching union membership occurred between Brown and Telecom employees thereafter.[4]

Michael Zafarano, branch operation manager of Telecom, testified as follows:

He is responsible for overseeing all the installation and maintenance of various customers of Telecom in the New York City area. In a difficult job following the installation of private telephones, Telecom would survey the location to ascertain the necessary material needed to install the telephone system. According to Zafarano, it would then "commence the pulling of cable, the placing of telephone instruments, the building of the private automatic branch exchange, which is the heart, the network of the telephone system itself, and upon cutover to the New York Telephone or the local operating company, we would continue to maintain that." The system that Telecom installs is multifloor and requires core drilling and the insertion of sleeves through slabs, work that is generally installed by electrical contractors under collective-bargaining agreements with Local 3. In addition, these electrical contractors install certain electrical specifications for climatized switch rooms, and install conduits through which the telephone cables run. The work in telephone installation performed by members of Local 3 working for electrical contractors coming within its jurisdiction at a jobsite includes the entire installation; i.e., cable pulling, placement of telephone sets, cross-connecting, pulling riser cables, terminating said cables, and building the PABX.[5]

Brian Reilly, employed as an installation manager for Telecom since January 1982, and previously a project supervisor for Telecom, testified as follows:

As project supervisor, he was responsible to oversee the installation at J & H. The work was to install a total telephone system, as described previously by Zafarano. This work was performed by Telecom's employees represented by CWA. In reference to the sequence of work, Telecon started by pulling a station cable, and during that time the contractor commenced its access work, so that when Telecom was finished with the station cable it was able to enter the closets and "run out risers to connect all the floors together." After the electrical contractor's work was concluded, it was necessary for Telecom to pull out larger riser cables from whatever floors the telephones were on down to the switch room. When Kleinknecht completed its electrical work in the switch room, Telecom hooked up the PABX machine itself, and did testing on it.

B. *Local 3's Rules*

Local 3's bylaws, article XIII, section 12, provides:

> No member is to give away work coming under the jurisdiction of this Local, or to allow any other tradesmen to do work coming under this Local's jurisdiction.

The bylaws do not in themselves prohibit work stoppages, but the International's constitution which binds the local prohibits Locals from causing or allowing a work stoppage in any controversy of a general nature before obtaining the consent of the International's president (art. XVII, sec. 13) and characterizes as misconduct for which members may be penalized the causing of a stoppage of work because of any alleged grievance or dispute without having the consent of the Local or its proper officers (art. XXVII, sec. 1(3).

The "total-job rule," a rule dictated by Local 3, states that an electrical contractor cannot do any access work or any other work unless it obtains the total installation job, which includes the maintenance and the moves and changes for the year after cutover.[6]

C. *Local 3's Conduct Alleged To Be Unlawful*

By December 11, access work performed by the employees of Kleinknecht, represented by Local 3, had been performed on some of the floors at the jobsite at 95 Wall Street. Ortega, one of Telecom's employees at the jobsite, testified that on December 11 he observed the employees of Kleinknecht stop working on the 12th floor. According to Ortega, the electrical workers left equipment including pipes, tubings, tools, and gang boxes, all equipment used for access work, by the freight elevator.[7]

Standley testified that on Monday, December 14, he was in his office with Brown discussing another construction project unrelated to the instant project. Standley stated that he had heard there had been a labor dispute the previous Friday afternoon (December 11). Brown responded, "Yes, that there had been a dispute, and it was a jurisdictional problem between Local Union 3 and CWA." Upon hearing this, Standley called Kleinknecht's office and spoke to Peter Kleinknecht, one of the principals of that company. Peter confirmed that his men

[3] The record is not clear whether Kleinknecht's collective-bargaining agreement with Local 3 stemmed from Kleinknecht's membership in the Association of Electrical Contractors. For the purposes of this case, it is irrelevant and immaterial.

[4] Henry Beverly, a coworker of Ortega's, verified this aspect of Ortega's testimony.

[5] PABX means Private Automatic Branch Exchange, the piece of gear that connects the outside world to the telephone instrument itself, which is manufactured by Telecom.

[6] This information was obtained from Zafarano over strenuous objections by Respondent's counsel on the basis that Zafarano was not competent to testify with respect to the matter. Although offered an opportunity to rebut the information by its own witnesses, Respondent did not do so, and I therefore credit Zafarano's understanding of the total-job rule to be accurate, as testified to by him.

[7] Also verified by Beverly, a coworker of Ortega's.

were not working on the Telecom installation as a result of a jurisdictional problem.[8]

Zafarano further testified that on December 14 or 15 Reilly informed him that there was a work stoppage on the access portion of the telephone system by Kleinnecht's employees. Zafarano immediately informed his superiors after instructing Reilly to have Telecom's employees continue to work. The following morning, Zafarano telephoned Local 3's office to speak to Bernard Rosenberg, the business agent of Local 3 responsible for problems occurring south of 42d Street in Manhattan where the jobsite is located. Not succeeding in reaching Rosenberg, Zafarano made several more telephone calls to Local 3's office, the last one occurring on December 24. He asserted that he did leave messages for Rosenberg to contact him with another business agent of Local 3, Michael Takfor. Zafarano also testified that he stated to Takfor that he needed to talk to Rosenberg in reference to the work stoppage at the Wall Street jobsite. He received no response to his telephone calls at any time from Rosenberg.

Reilly testified that he became aware of the work stoppage at the jobsite about December 10 or 11. As a result of the work stoppage, a meeting was held in the office of Darwin Ley, the manager of financial and administrative systems of J & H, who has overall responsibility for coordinating the project at 95 Wall Street. Present were several employees of Telecom, Ley, Alf Flornes, and Brown, the last two named being employees of Kleinknecht. According to Reilly, Brown stated that it was within Local 3's jurisdiction to pull out the cable on this job, citing a precedent set at another jobsite where Local 3 members were utilized to pull cable of Telecom. Ley denied that there had been a precedent set and asked him if they were expected to pull cable at a jobsite of the New York Telephone Company which also employs members of CWA. Brown responded negatively, explaining that an "arrangement" had been made. Standley stated that this was a problem between the two unions. Flornes agreed after which Standley, Brown, and Flornes left the room. A few minutes later, Ley received a telephone call from Standley, overheard by Reilly. Standley informed Ley that he was with Brown and Flornes, who advised him that they had spoken with the management of Kleinknecht, who agreed that the jurisdictional problem could be solved by employing only one union on the job.

Standley testified that he first heard of the problem at the jobsite on Monday, December 14, from Brown in his office. (See *supra* for the conversation). The following day, Standley was in his office with Brown and Flornes. Brown again stated that a jurisdictional problem between Local 3 and CWA existed. Upon hearing this, Standley, accompanied by the two Local 3 members, joined a meeting in the office of Darwin Ley. He confirmed that, when Ley asked about the work stoppage, Brown stated that the work stoppage was the result of a jurisdictional problem between the two unions. Upon leaving the meeting with Flornes and Brown, Standley telephoned Peter who confirmed the labor dispute. Peter informed Standley that he was prepared to complete the entire job at no extra cost to J & H. Peter stated that he wanted Ley to hear this, so a second call was made in which Standley and Ley both heard Peter's statement. Standley answered that he had no authority to award such a contract and would call Peter at a later time.

On December 22, another meeting was held among attorneys and employees of J & H and Kleinknecht.[9] When the Kleinknechts were asked if Local 3 had contacted them, attorneys for Kleinknecht would not permit the question or any other questions to be answered.

Darwin Ley testified that, at the December 15 meeting in his office, he asked if Local 3 felt it should be doing all the electrical work at the project, to which Brown nodded affirmatively. He further testified that Peter told him that he believed only one union should be utilized at the job and that anything else would be impractical and unreasonable, and would only create problems. Peter further asserted that he would be happy to do the entire job at no additional cost to J & H.

Ley attended the meeting of December 22 with various attorneys and representatives of J & H and Kleinknecht. He testified that at this meeting the attorney for Kleinknecht stated that "their contract with Local 3 required or did not allow them to work with any other union in the building or words to that effect."

D. *Respondent's Defense*

Bernard Rosenberg testified that he was unaware of any telephone calls from Zafarano to him in December. He first discovered that Brown was not performing work at the jobsite upon receiving a telephone call from his attorney the Sunday after Christmas (December 27).[10] The next day, unable to visit the jobsite himself, he asked other coworkers to visit the jobsite, instructing them to order the employees to return to work. The instructions were related to the employees and they returned to their assigned duties at the jobsite.[11]

Rosenberg further asserted that it was Local 3's position with respect to members refusing to do work assigned to them that it will condemn any electrician for refusing to perform electrical work, as "the Union's policy is that we would decide as to who would do work and who would not do work and no member has a right to usurp our policy." However, Rosenberg acknowledged that no employee was disciplined by Respondent as a result of the work stoppage. He claimed that, as far as he was concerned, the case was closed.

With respect to the alleged telephone calls by Zafarano, Rosenberg acknowledged that Takfor is employed

[8] Over Respondent's objections that the conversation between Peter Kleinknecht and Standley was hearsay and Respondent was not bound, I allowed the testimony to stand. Although by itself, Peter's comment does not bind Respondent, it lends credence to what Brown had told Standley that same day. For reasons discussed *infra*, I find Brown to be an agent of Respondent.

[9] Both Peter and Richard Kleinknecht were present at the meeting.

[10] The record contains no information to explain when or how Respondent's attorney had become aware of the problem. However, Respondent's attorney, in his brief, wrote that he received a telephone call from a Board agent informing him of the problem.

[11] Zafarano and Ortega testified that Local 3 employees of Kleinknecht returned to perform the access work about December 29. The job was completed at the end of January 1982.

as a business representative by Respondent. He stated that he, Rosenberg, receives all telephone calls regarding problems south of 42d Street in Manhattan and did not know what happened to any phone calls allegedly made by Zafarano for him. He further stated that he did not necessarily know of all problems in his area because another business agent, Bill Gillin, handles telephone interconnect work, and sometimes he would get a call, as well as Rosenberg, to handle problems. He further averred that, if difficulty on the jobsite involved a dispute over telephone work, Gillin may well have been told about it.[12]

Rosenberg admitted that Local 3 aspires to have its electricians do all the electrical work on a job. According to Rosenberg, the steps taken to fulfill the aspiration is training members to be more productive.

E. *Discussion and Analysis*

The facts of this case are not in dispute. All the witnesses presented by the General Counsel testified in a straight, forthright, and sincere manner. None of the facts testified to by the General Counsel's witnesses was refuted by testimony of Respondent's witnesses. Respondent chose only to call Rosenberg, principally for the purpose of establishing that he did not receive telephone calls from Zafarano in December, but that, upon discovering the work stoppage, he instructed his members to return to work. The record reveals that Rosenberg was attending a Christmas party on December 24, and thus was not working most of that day. There is no explanation from Respondent why Rosenberg was not informed by Takfor of the telephone calls from Zafarano on other occasions in December. Assuming, *arguendo*, that Rosenberg did not receive messages from Takfor that Zafarano had telephoned him, Respondent did not refute Zafarano's testimony that Zafarano made the telephone calls and spoke to Takfor. As Takfor is admittedly a business agent of Local 3 whose job is to handle all telephone calls, and no evidence was offered that he did not receive the telephone calls, I find that said telephone calls were made by Zafarano, and, therefore, Local 3 was placed on notice of the problem at the jobsite as early as December 15, the date that Zafarano testified he first called Local 3.

Assuming, *arguendo*, that Respondent's contention that neither Rosenberg nor any other business agent or officer of Respondent was aware of the work stoppage of Kleinknecht's electricians on December 11, I would still be constrained to find that the continued maintenance by Respondent of the provision in its bylaws is sufficient to hold it responsible for inducing and encouraging the walkout of its members from the Wall Street jobsite.[13] As the Board stated as early as 1963 in *Local 3, International Brotherhood of Electrical Workers, AFL-CIO (New York Telephone Company)*, 140 NLRB 729, enfd. 325 F.2d 561 (2d Cir. 1963), "The bylaw itself constituted an 'inducement' or 'encouragement' to the action."

My conclusion that Local 3 is liable for the action taken by the employees of Kleinknecht is buttressed further by the fact that it took no action to discipline the men who participated in the work stoppage. Rosenberg insisted that, upon discovering the work stoppage, he immediately instructed the employees, through other business agents, to return to work, and therefore, as far as he was concerned, "the case was closed." Rosenberg conceded that he has no knowledge of any members of Local 3 ever being disciplined for work stoppages involving similar situations as found in this instant matter. I can only conclude that the failure of Local 3 to ever discipline any of its members for unilaterally taking actions contrary to the constitution of its International Union which provides for discipline is a signal to its members that such action taken by them will never result in any penalties. The Board has held that the Union's failure to discipline its members is reason for holding the Union responsible for its members' actions.[14]

In her decision in *Eastern States*, Administrative Law Judge Fannie M. Boyls stated:

> It is well settled, moreover, that a complete stoppage of work is not necessary to show unlawful restraint or a "cease doing business" object within the meaning of Section 8(b)(4)(B) of the Act. *N.L.R.B. v. Local 825, Operating Engineers*, 400 U.S. 297, 304–305; *Local 3, IBEW (New York Telephone Company)*, 140 NLRB 729, enfd. 325 F.2d 561 (C.A. 2).

Administrative Law Judge Boyls, in the same decision, further stated:

> The enforcement by a union of a bylaw which obligates member not to permit their own employers to assign to other tradesmen employed by him work falling within the work juisdiction claimed by the union would not appear to be in violation of the Act. The bylaw here in issue, however, is so broadly worded as to obligate Local 3 members not to permit any other tradesmen to perform work within their claimed jurisdiction irrespective of the employer for whom such other tradesmen may be working. Obedience to the bylaw in situations such as that here presented therefore necessarily induces and encourages employees to refuse to perform services or to take other proscribed action with an object of forcing or requiring persons to cease doing business with other persons within the meaning of Section 8(b)(4)(i) and (ii)(B) of the Act.
>
> This is not to say that the maintenance of the bylaw is in itself a violation. Rather, it constitutes

[12] Neither Gillin nor Taxfor were called as witnesses by Respondent to further clarify this problem.

[13] The Supreme Court concluded in *International Brotherhood of Electrical Workers, et al. [Samuel Langer]* v. *N.L.R.B.*, 341 U.S. 694, 701 (1951), that "the words 'induce or encourage' are broad enough to include in them every form of influence and persuasion." See also *N.L.R.B. v. Local Union No. 3, International Brotherhood of Electrical Workers, AFL-CIO [New York Telephone Company]*, 477 F.2d 260 (2d Cir. 1973), enfg. 197 NLRB 328 (1972).

[14] *Local Union No. 3, International Brotherhood of Electrical Workers, AFL-CIO (Eastern States Electrical Contractors, Inc.)*, 205 NLRB 270, 273 (1973); *Local Union No. 3, International Brotherhood of Electrical Workers, AFL-CIO (L. M. Ericsson Telecommunications, Inc. New York Division)*, 257 NLRB 1358 (1981).

> the inducement and encouragement element of the 8(b)(4) violation which occurs when members, acting in obedience to the bylaw, cease their work for a proscribed object. *Joliet Contractors Association* v. *N.L.R.B.*, 202 F. 2d 606, 612 (C.A. 7, 1953), cert. denied 346 U.S. 824 (1953).

Although Respondent contends that the statements and action of Brown should not be attributable to Local 3, in the circumstances of this case, I find that Brown was acting on behalf of Local 3. As the foreman on the job he was enforcing the Union's total-job policy. In *Local 1016, United Brotherhood of Carpenters & Joiners of America, AFL-CIO, et al. (Booher Lumber Co., Inc.)*, 117 NLRB 1739, 1744 (1957), enfd. in part 273 F.2d 686 (2d Cir. 1960), the Board held that a foreman's actions in carrying .out union rules bound the union. Similarly, in *International Association of Heat and Frost Insulators and Asbestos Workers Local No. 53 (McCarty and Armstrong)*, 185 NLRB 642, 650 (1970), a foreman's statements were binding on the Union where the foreman was carrying out union policy. See also *Local Union No. 3, International Brotherhood of Electrical Workers, AFL-CIO (Western Electric Company, Incorporated)*, 141 NLRB 888, 893 (1963), enfd. 339 F.2d 145 (2d Cir. 1964).

Responding to arguments made in Respondent's brief, as I have credited Zafarano's testimony that he first notified Respondent of the work stoppage via a telephone call on December 15, at which time he spoke with business agent Takfor, I do not accept Respondent's position that it was unaware of the work stoppage until Sunday, December 27. Had Respondent demonstrated diligence, the work stoppage could have been discontinued as early as December 15, Respondent argues further that there is no evidence that Brown ever heard of article XIII, section 12, of its bylaws. As Brown is under control of Respondent and was not called as a witness to deny said knowledge, I make an adverse inference that he, as well as all other members of Local 3, is well aware of this section of Respondent's bylaws. Another argument of Respondent that warrants a response is its position that Kleinknecht, the employer of Local 3's members, removed them from the job to perform other duties. As both the General Counsel and Charging Party point out in their respective briefs, if this were the case, how could Respondent succeed in ordering the employees back to work on December 28? The answer is obvious. He who has the power to remove has the power to reinstate.

For the foregoing reasons, I find that Local 3 induced and encouraged its members to engage in a strike or to cease in the course of their employment to perform services for Kleinknecht, and restrained and coerced Kleinknecht, with whom Local 3 has no dispute, an object being to force and require Kleinknecht and J & H to cease doing business with Telecom. Accordingly, I find that Local 3 has violated Section 8(b)(4)(i) and (ii)(B) of the Act.

CONCLUSIONS OF LAW

1. Northern Telecom, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) and Section 8(b)(4) of the Act.

2. Respondent is a labor organization within the meaning of Section 2(5) of the Act.

3. By inducing and encouraging its members employed by George Kleinknecht, Inc., to engage in a strike or refusal in the course of their employment to perform services, and restraining and coercing Kleinknecht, with an object of forcing or requiring Kleinknecht and Johnson & Higgins at the jobsite located at 95 Wall Street, New York, New York, to cease doing business with Telecom, Respondent, Local 3, has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(b)(4)(i) and (ii)(B) of the Act.

4. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

The unfair labor practices committed by Respondent in the instant case were committed almost immediately following the completion of a 6-day hearing, ending on December 2, 1981, in *Local 3, IBEW (General Dynamics Communication Company)*, Case 2-CC-1734, in which basically the same issues as those found in the instant case were litigated. A decision was rendered by Administrative Law Judge D. Barry Morris on March 5, 1982 (JD-(NY)-26-82) [264 NLRB No. 96 (1982)], less than 1 month prior to the hearing of the instant case. That case is presently pending before the Board at this time. Considering the fact that the jurisdictional dispute involving Local 3 and CWA has been continuing, almost without interruption, since at least 1963, and that it has been 9 long years since the issuance of the Board decision in *Local 3, IBEW (Eastern States)*, 205 NLRB 270, and slightly over 1 year since the issuance of *Local 3, IBEW (L.M. Ericsson)*, 257 NLRB 1358, it appears that the remedies promulgated by the Board in those cases have had little, if any, influence in deterring the unfair labor practices similar to those committed herein. Accordingly, inasmuch as the board has before it the recommended Order of my learned colleagues, Administrative Law Judge D. Barry Morris, and as I have studied carefully his remedial sugestions, I find myself in full accord with his recommendation, which is as follows:

> General Counsel and the Charging Party urge that Respondent's conduct herein, taken together with its past history, requires the issuance of a broad order prohibiting not only unlawful secondary activity directed to the secondary employers in this case with regard to disputes with the primary employers in this case, but also such activity directed to all secondaries with respect to all primaries. I agree that such a broad order is necessary to effectuate the policy of the Act. Such broad orders are required where a respondent's conduct, both in the record and in the past history of litigated cases, warrants a finding that respondent has shown a proclivity or a general scheme to violate the Act. See *General Service Employees Union Local 73 (Andy Frain, Inc.)*, 239 NLRB 295, 310 (1978).
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> Citing prior cases in which Respondent violated Section 8(b)(4) of the Act, the Board issued a broad

order in *Local Union 3, IBEW (New York Telephone)*, 197 NLRB 328, 332–3 (1972), enfd. 477 F.2d 260 (2d Cir. 1973). Since that time Respondent has continued to violate the same section of the Act. See *Local 3, IBEW (Hylan Electric Co.)*, 204 NLRB 193 (1973); *Local 3, IBEW (Mansfield Contracting Corp.)*, 205 NLRB 559 (1973); *Local 3, IBEW (Eastern States)*, 205 NLRB 270 (1973); *Local 3, IBEW (Wickham Contracting Co.)*, 220 NLRB 785 (1975), enfd. 542 F.2d 860 (2d Cir. 1976); *Local 3, IBEW (New York Electrical Contractors Association)*, 244 NLRB 357 (1979). In addition, the evidence adduced with respect to Two Broadway shows another instance in which Respondent has continued to adhere to its total job policy. In these circumstances, it is reasonable to anticipate future violations and it is necessary to prohibit such unlawful conduct directed against all persons in connection with disputes with any and all primary employers or persons.

I also find it necessary to insure that notice of Respondent's conduct and the Board's remedy reach all interested and potentially affected persons. Traditionally notice posting at places where employees of the parties involved herein or members of Respondent congregate is insufficient to notify all potential primaries and secondaries or members. I therefore will recommend that Respondent publish the notice at its own expense in a newspaper of general circulation in the New York metropolitan area. See *General Service Employees (Andy Frain, Inc.)*, *supra*, 239 NLRB at 310–11. In addition, I will recommend that the notice be published in Respondent's publication, "Electrical Union World," with copies mailed to all Local 3 members at their home addresses. See *Local 3, IBEW (Eastern States)*, *supra*, 205 NLRB 270; *L. M. Ericsson*, *supra*, 257 NLRB No. 167, sl. op. at 34.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[15]

The Respondent, Local 3, International Brotherhood of Electrical Workers, AFL–CIO, Queens, New York, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Applying its bylaws in such a manner as to induce or encourage any member employed by George Kleinknecht, Inc., or by any other person engaged in commerce or in an industry affecting commerce, to engage in a strike or a refusal in the course of his employment to perform any services, or in such manner as to restrain or coerce George Kleinknecht, Inc., or any other person engaged in commerce or in an industry affecting commerce, where, in either case, an object thereof is to force or require George Kleinknecht, Inc., Johnson & Higgins, and any other subcontractors on the jobsite at 95 Wall Street, New York, New York, to cease doing business with Northern Telecom, Inc., or any other employer or person.

(b) In any other manner inducing or encouraging any member employed by a person engaged in commerce or in an industry affecting commerce to engage in action proscribed by Section 8(b)(4)(i) or (ii)(B) of the Act in connection with enforcing a work jurisdictional claim involving work in or on any building occupied by, or to be occupied by, Johnson & Higgins or any other employer or person.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Publish the complete text of the attached notice marked "Appendix" in a conspicuous place in its semimonthly publication, "Electrical Union World," or successor publication, however named, and mail a copy of said publication to each member of Local 3 and post copies of said notice in conspicuous places in its business offices, meeting halls, and all places where notices to members are customarily posted.[16] Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by Local 3's representatives, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily displayed. Reasonable steps shall be taken by Local 3 to ensure that said notices are not altered, defaced, or covered by any other material.

(b) Deliver to the Regional Director for Region 2 signed copies of said notice for posting by George Kleinknecht, Inc., if willing, at places where notices to its employees or Local 3 members are customarily posted.

(c) Publish at its expense the terms of the notice, in a form and size approved by the Regional Director for Region 2, in a daily newspaper of general circulation in the New York metropolitan area. Publication is to be made on three separate days within a 3-week period at a time designated by the Regional Director.

(d) Notify the Regional Director for Region 2, in writing, within 20 days from the date of this Order, what steps Local 3 has taken to comply herewith.

[15] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[16] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."